IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

A<u>mended Civil Writ Petition No.15257 of 2003</u>
<u>Date of Decision : 16.10.2006</u>

Vinod Kumar Gupta

... Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM : Hon`ble Mr. Justice M.M.Kumar
Hon`ble Mr. Justice M.M.S.Bedi.

Present : Sh. S.P.Laler and Sh. B.K.Bagri, Advocates
for the petitioner.

Sh. Harish Rathee, Sr. D.A.G. Haryana
for the respondent-State.

Sh.Rameshwar Malik, Advocate

<u>M.M.Kumar, J.</u> (Oral)

The short question raised in this petition is whether the period of service rendered by the petitioner on ad hoc basis before his regularisation is entitled to be considered for the purpose of seniority.

The petitioner was appointed as Junior Engineer vide order dated 30.6.1980 (Annexure P-1). According to the terms and conditions of the appointment letter the nature of appointment of the

petitioner was temporary and was confined to one year period. The petitioner has joined his duty on 15.7.1980. Respondent No.3 Narender Jindal, who was working as Junior Engineer in the Municipal Council, Ladwa has joined on transfer at the Municipal Council, Bhiwani. Respondent No.4 Balraj Singla was also working at the Municipal Council Ladwa and joined as Junior Engineer on 29.1.1982. On the aforementioned basis, the case of the petitioner is that he has joined the Municipal Council, Ladwa prior to the aforementioned Junior Engineer and is thus entitled to be considered senior to Sh.Narender Jindal and Balraj Singla. It has also been asserted that neither of them were appointed on the post of Junior Engineer through the Subordinate Selection Board, Haryana (for brevity `the Board'). The service conditions of Junior Engineer are regulated by the Rules known as Haryana Municipal Services (Integration, Recruitment and Condition of Service), Rules, 1982 (for brevity `the 1982 Rules'). The petitioner duly applied for the post of Junior Engineer, appeared before the Board, selected and was appointed as such, with effect from 10.1.1983.

In the tentative seniority list of Junior Engineer, as it stood on 1.1.1997 (Annexure P-6), the name of the petitioner had been shown below the names of respondents as he was not considered to have joined w.e.f. 15.7.1980. He filed his objections on 8.3.1997 (Annexure P-7). Again a revised tentative seniority list was issued on 20.7.1998 wherein the date of joining of the petitioner was considered to be 15.7.1980. His name was shown at serial No.15 and the private respondents were placed below his name. It has been asserted that the aforementioned seniority list was in accordance with the requirements of instructions dated 15.2.1984 (Annexure P-3). Again objections were invited and according to the

assertions made by the petitioner, no objections were filed. Despite that objections were again invited on 4.8.1999 which resulted into circulation of still another tentative seniority list on 15.11.2000 wherein the date of appointment of the petitioner has been changed from 15.7.1980 to 10.1.1983 (Annexure P-9). It is alleged that neither of the dates given in this aforementioned seniority list is based on the recommendation made by the Board nor on the date of issuance of appointment letter by the Government. The petitioner submitted his objections on 13.12.2000 (Annexure P-10) and sought personal hearing. He was called for personal hearing on 30.4.2001. The Secretary, M.C. Ladwa was also called with the service record of the petitioner for the same date on 30.4.2001. The petitioner appeared before the Sub Committee, however, no decision could be taken on 30.4.2001 and without receiving any further notice of hearing, the petitioner alleges, that the final seniority list was issued on 30.5.2003 (Annexure P-11). The name of the petitioner has been placed at serial No.9 and those of respondents No.3 and 5 at serial No.7 and 8 respectively. It is further alleged that respondent No.3 Sh.Narender Jindal had been promoted on 20.5.2002 by order Annexure P-13 on the post of Municipal Engineer. The petitioner has been promoted on 4.6.2003 by giving him charge of the post of Municipal Engineer (Annexure P-14).

It is appropriate to mention that respondent No.4 was appointed as Junior Engineer on 28.l1.1982 after he was subjected to interview on 21.1.1982 by the S.S.S.Board. He was to remain on probation for a period of one year. It is claimed that the nature of appointment of the petitioner and that of respondent No.4 Balraj Singla is the same. It has been asserted that use of expression as temporary in the appointment letter issued to the

petitioner is insignificant, as the same very expression has been used in the appointment letter dated 6.1.1983 (Annexure P-4). Accordingly, the petitioner has claimed that service rendered by him from 15.7.1980 to 6.1.1983 cannot be excluded for the purpose of seniority. He has mainly placed reliance on the instructions dated 15.2.1984 Annexure P-3 which provides for procedure concerning preparation of seniority list of various categories of employees which have been issued in pursuance to 1982 Rules.

The stand of respondents No.1 and 2 in their written statement is that the writ petition suffers from delay and latches. According to them, the first final seniority list of Junior Engineers was circulated by the respondents on 14.8.1984 which reflects the petitioner at serial No.38 and respondents No.3 to 5 have been shown at serial No.35, 36 and 37 respectively. The seniority of the petitioner at serial No.38 is stated to have been fixed in accordance with his date of appointment which was taken to be 10.1.1983. On 29.6.1989 a tentative seniority list of Junior Engineer was issued and objections were invited. Respondents No.3 to 5 were again senior to the petitioner at serial No.28 to 30 whereas the petitioner was at serial No.31. Accordingly final seniority list was issued on 28.6.1990 as it stood on 1.1.1989 wherein the petitioner has been shown at serial No.30 and respondents No.3 to 5 at serial No.27 to 29. A copy of each final seniority list has been placed on record as Annexures R1 and R2. It is claimed that the petitioner has failed to challenge the seniority list Annexures R-1 and R-2 at any stage. It has further been submitted that the date of appointment as Junior Engineer of the petitioner has been rightly taken to be 10.1.1983 because his initial appointment on 15.7.1980 was on temporary basis which

was beyond the competence of Municipal Committee as per the notification dated 17.11.1972 (Annexure R-3). According to the aforementioned notification all appointments to posts carrying basic pay exceeding Rs.150/- but not exceeding Rs.350/- per month were required to be made by the Municipal Committee through the Subordinate Services Selection Board, Haryana.

In respect of the objections filed by the petitioner against tentative seniority list on 13.12.2000 the stand of the respondents is that he was granted personal hearing on 30.7.2001 and 18.5.2001 alongwith private respondents. It was thereafter that seniority list was finalised on 13.5.2003 (Annexure P-11) after the objections were duly considered. The respondent has also pointed out that the letter of appointment dated 30.6.1980 (Annexure P-1) has not been correctly produced and the correct copy is stated to be as per Annexure R-4. According to the correct copy there is some variation in condition No.19 stipulating that the services of the petitioner could be terminated at any time being temporary by giving him one month's notice as required under the Act.

We have heard the argument at a considerable length. It would be appropriate to make a brief reference to the `1982 Rules'. According to Rule 8, the municipal services were provincialised and all those employees who were working on regular basis from the date of enforcement of `1982 Rules' i.e. 15.2.1982 were to stand integrated according to the procedure which was to be laid down by the Government. Rule 14 which deals with the fixation of inter se seniority provides that the seniority was to be determined by the length of their continuous service on post and a member appointed by direct recruitment was to abide by the order of merit

determined by the Board or any other recruiting agency. It further provides that in case same persons have been appointed on the same date a member appointed by direct recruitment is to rank senior to a member appointed otherwise. Rules 8 and 14 of the 1982 Rules are reproduced herein for facility of reference.

> 8."Integration of existing employees- (1) All the employees of municipalities located in Haryana and working on regular basis on the day these rules come into force shall stand integrated according to the procedure as may be laid down by the Government.
>
> (2)There shall be no reduction in the basic pay which a municipal employee was drawing immediately before these rules come into force but any special pay which an employee was getting for performing any additional duties shall not be protected.
>
> (3) Without prejudice to the provisions of sub-rule (2) the pay of a municipal employee shall be adjusted and fixed in the scale of pay of the cadre as laid down in the Appendix A in accordance with the provisions contained in Punjab Civil Services Rules, Volume 1, Part 1, as applicable to the State of Haryana."
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> 14."Seniority – The seniority inter se of the members of the Service shall be determined separately for every category by the length of their continuous service on a

post in the said category:

> Provided that in the case of members appointed by direct recruitment, their inter se seniority shall be in the order of merit determined by the Commission, Board or any other authority as the case may be :
>
> Provided further that in the case of two or more members appointed on the same date, a member appointed by direct recruitment shall be senior to a member appointed otherwise."

A perusal of Rule 8 shows that only those employees of Municipal Councils located in the State of Haryana and working on regular basis on 15.2.1982 were to be integrated with the existing employees. It follows that the period of their continuous service on a post in their respective category has to be regular. In other words any ad hoc or temporary service before appointment on regular basis is not to be considered or added for the purpose of seniority.

When the facts of the present case are examined in the light of Rules 8 and 12 of `1982 Rules' it becomes evident that by no stretch of imagination the petitioner could be considered to be working on the post of Junior Engineer on regular basis before he was appointed as such vide appointment order dated 6.1.1983 (Annexure P-4). His earlier service rendered on temporary basis would not qualify for the purpose of seniority. The letter of appointment of the petitioner when he was initially given temporary appointment clearly postulates that his services were liable to be terminated any time being temporary by serving on him one month's notice. Therefore, there is no illegality committed by the respondents by reckoning

his services from the date of his regular appointment commencing from 10.1.1983. A Constitution Bench judgment of the Supreme Court in the case of **Direct Recruit Class II Engineering Officer's Association Vs. State of Maharashtra (1990) 2 SCC 715** has held that the persons who have been appointed on ad hoc basis without following the procedure laid down for recruitment are not entitle to add their ad hoc period of service for the purpose of seniority.

Even otherwise the writ petition suffers from unexplained delay and latches. The seniority list of the Junior Engineer as far as the petitioner and private respondents are concerned, had been finalised on 14.8.1984 wherein the petitioner has been shown at serial No.38 and the respondents have been kept at serial No.35 to 37. The seniority list was again finalised on 28.6.1990 as on 1.1.1989 wherein the petitioner has been shown at serial No.30 and the respondents have been kept at serial No.27 to 29 respectively. It is well settled that merely because a tentative seniority list has been issued on a later date the person like the petitioner did not acquire the right to raise objection because their rights have already attained finality. In that regard reliance could be placed on a Constitution Bench Judgment of the Supreme Court in the case of Rabindernath Bose Vs. Union of India AIR 1970 SC 470. There is no explanation coming forward as to why the seniority list as finalised in 1984 taking the date of appointment of the petitioner as 10.1.1983 and showing him junior to the private respondents had not been ever challenged. Similar is the position in respect of the seniority list dated 28.6.1990 (Annexure R-2), therefore, the writ petition in any case suffers from delay and latches. The Courts as a matter of prudence would not exercise jurisdiction under Article 226 to unsettle the settled

rights.

For the reasons stated above, the writ petition fails and the same is dismissed.

(M.M.KUMAR)
JUDGE

(M.M.S.BEDI)
JUDGE

October 16 , 2006
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